



**Federal Communications Commission
Washington, D.C. 20554**

February 17, 2011

DA 11-310

In Reply Refer to:

1800B3-VMM

NAL/Acct. No. MB-200741410437

FRN:0003774015

Released: February 17, 2011

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Re: Stations KXOX-FM and KXOX(AM),
Sweetwater, Texas
Stein Broadcasting Company, Inc.
Facility ID ## 63198, 63197
File Nos. BRH-20060717ABN, BR-20060717ABO

Gentlemen:

Before the Audio Division is a January 2, 2008, Response¹ filed on behalf of Stein Broadcasting Company, Inc. ("Licensee"), licensee of Stations KXOX(AM) and KXOX-FM, Sweetwater, Texas ("Stations"). The Response seeks cancellation of the December 3, 2007, Notice of Apparent Liability for Forfeiture ("NAL")² in the amount of fourteen thousand dollars (\$14,000), to Licensee for willfully violating Section 73.3539 of the Commission's Rules ("Rules") and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") for its failure to timely file license renewal applications for the Stations and for unauthorized operation of the Stations after their licenses had expired.³ For the reasons set forth below, we cancel the monetary forfeiture issued on December 3, 2007, and assess Licensee a 25 per cent late-fee penalty for its late filing.

Background. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ Licensee's renewal applications for the Stations should have been filed by April 1, 2005, four months prior to the August 1, 2005, expiration date. No such applications were filed, and the Stations' licenses expired on August 1, 2005. Accordingly, on July 12, 2006, the staff wrote to Licensee indicating that the Stations' licenses had expired and that (1) all authority to operate the Stations was terminated; and (2) the Stations' call letters were deleted from the

¹ *Petition for Partial Reconsideration and Response to Notice of Apparent Liability* (January 2, 2008) ("Response").

² *Stein Broadcasting Company, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 20935 (MB 2007).

³ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

⁴ 47 C.F.R. § 73.3539(a).

Commission's data base. Licensee was advised that any further operation of the Stations was unauthorized and must cease immediately.⁵ Upon receipt of the letter, on July 17, 2006, it filed the captioned license renewal applications, explaining that it thought that the applications had been successfully filed on March 28, 2005. On August 1, 2006, Licensee filed requests for special temporary authority ("STA") to continue operations pending consideration of the untimely KXOX(AM) and KXOX-FM renewal applications.⁶ The staff granted the STA Requests on August 17, 2006, and on March 13, 2007.⁷ After the second STA expired on September 13, 2007, Licensee did not seek an extension or file for additional authority to continue operating the Stations. On December 3, 2007, the staff granted the renewal applications for the Stations and issued the NAL.

On January 2, 2008, Licensee filed the Response, requesting that we reconsider the forfeiture,⁸ stating that the Stations' renewal applications were filed in good faith and that no unauthorized operation occurred. Licensee states that it believed it had originally filed the renewal applications on time through the Commission's CDBS electronic filing system and notes that the system message read, "successfully filed."⁹ It includes a screenshot printout from CDBS showing this language, which then directs it to pay the filing fee.¹⁰ Licensee also maintains that it paid the fees by credit card and had no indication that the payment was not credited, but does not include a screenshot printout showing that its payment was successful. Licensee explains that its first indication of a problem came fifteen months later, when it received the license cancellation letters from the Commission.¹¹ It states that it immediately re-filed the Stations' applications at that time. Finally, Licensee argues that reduction or cancellation of the forfeiture is warranted based on Licensee's inability to pay, and includes financial information in support.

Discussion. We have reviewed the record in this case and the Commission's data bases, and we find that Licensee did in fact tender license renewal applications for the Stations on March 29, 2005, but failed to pay the requisite filing fees. It successfully re-filed its applications and paid the required fees on July 17, 2006, including an explanation of the circumstances regarding its error.¹² For the reasons set forth below, we will cancel the NAL and impose a 25% penalty as provided in Section 1.1118 of the Rules.

Under Section 1.1118(a) of the Rules,¹³ if the defective fee is discovered within 30 days of filing, the application is dismissed and can be re-filed with a new filing date. If the defect is discovered after 30 days have passed without being "forwarded to Commission staff for substantive review," pursuant to

⁵ *Letters to Stein Broadcasting Co., Inc.* Ref. 1800B3-JDB (Chief, Audio Division, Media Bureau, Jul. 12, 2006).

⁶ See File No. BLSTA-20060801AAG & BLSTA-20060801AAF ("STA Requests").

⁷ *Letter to Jarrett S. Taubman, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Mar. 13, 2007).

⁸ Response at 2.

⁹ At that time, Licensee states and Commission records confirm, that its applications were assigned BR-20050329ADM and BRH-20050329ADK. See Response, Exhibit 1.

¹⁰ Response, Exhibit 1.

¹¹ Response at 4.

¹² Licensee recognized its original application was not properly filed and re-filed its renewal application with a fee and an explanation about its error prior to any Commission action against its license. *Cf.*, *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688(MB 2009) (licensee required to pay forfeiture when it files application without fee and later re-files, but only provides an explanation of its initial filing error in response to an NAL).

¹³ 47 C.F.R. §1.1118(a).

Section 1.1118(b) of the Rules,¹⁴ a filer is billed the fee amount due plus a 25 percent penalty. Thus, under current electronic application filing procedures, the March 29, 2005, submission was never “forwarded to Commission staff for substantive review” because it did not contain the requisite filing fee. To the extent that the Rules provide that the Commission’s recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to bill the applicant retroactively and impose the 25 percent penalty,¹⁵ we will do so here. As Licensee has already paid the renewal fees, it will presently only be required to pay the 25 per cent penalty. In light of this disposition, we need not address Licensee’s request for reduction based on inability to pay.

Conclusion/Action. In view of the foregoing, Stein Broadcasting Company, Inc.’s, Petition for Partial Reconsideration and Response to Notice of Apparent Liability for Forfeiture directed to our December 3, 2007, NAL in the amount of \$14,000, IS GRANTED, and the Notice of Apparent Liability (NAL/Acct. No. MB-200741410437) for violation of Section 73.3539 of the Commission’s Rules and Section 301 of the Communications Act of 1934, as amended, is HEREBY CANCELLED. Pursuant to Section 1.1118(b) of the Rules, Stein Broadcasting Company, Inc., will be assessed a penalty charge equal to 25 percent of the filing fee(\$75.00) under separate cover.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Stein Broadcasting Company, Inc.

¹⁴ 47 C.F.R. §1.1118(b).

¹⁵ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 957, Supplemental Order, 2 FCC Rcd 1882 (1987), *recon. granted in part*, 3 FCC Rcd 5987 (1988), *aff’d sub nom. Brown v. FCC*, 888 F.2d 898 (D.C. Cir. 1989) (“On further review, we believe that a clearer demarcation point is necessary to avoid industry confusion and uncertainty as to the consequences of an insufficient fee payment. Generally, when applications are received, tracking information is put into a data base. Although some bureaus and offices may enter data fast than others [sic], the process generally takes approximately 30 days. During this same 30 day period we will expect bureau and office staff to take a second review of the fee and enter identifying codes into the fee system. Thus, this timeframe allows the Commission to complete its initial review of fees and return unprocessable applications before authorizations are granted. Therefore, fee underpayments identified by Commission staff in 30 calendar days or less from the time of receipt of the application at the Commission or Treasury lockbox bank will result in dismissal of the application and its return to the applicant. . . . Underpayments identified after this time will result in a bill to the applicant that includes a penalty charge of 25 percent of the amount due.”). See also *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25 percent penalty).